



Roll Call Number

18-0797

Agenda Item Number

41

Date May 7, 2018

REVIEW OF ZONING BOARD OF ADJUSTMENT DECISION
GRANTING A VARIANCE FROM SEPARATION REQUIREMENT TO ALLOW SALES OF
ALCOHOLIC LIQUOR, WINE AND BEER AT 4028 EAST 14TH STREET

WHEREAS, on April 25, 2018, the Zoning Board of Adjustment voted 6-1 to approve an application from Bhajan Aulakh (owner) for a variance of the separation requirement that the premises of any gas station/convenience store in a "C-2" General Retail and Highway-Oriented Commercial District seeking to sell alcoholic liquor, wine and beer be separated by at least 500 feet from any church, school, public park or licensed child care facility, as set forth in Municipal Code Section 134-954(a), to allow for a new 2,500-square foot gas station/convenience store building selling alcoholic liquor, wine and beer on the real property locally known as 4028 East 14th Street ("Property"), which new store building would replace an existing building on the Property where alcoholic liquor, wine and beer is currently sold; and

WHEREAS, the Property is located within 309' of a licensed childcare facility at 4040 York Street; and

WHEREAS, the Board found that the proposed new gas station/convenience store building selling alcoholic liquor, wine and beer on the Property would not alter the essential character of the locality of the land in question, as the currently existing building sells alcoholic liquor, wine and beer, the Property's lot line is physically separated from the licensed childcare facility by a wooded area and street right-of-way, and that the intent of the separation distance requirements of the Zoning Code have been met; and

WHEREAS, Iowa Code §414.7 and Section 134-65(d) of the Zoning Ordinance require that any variance from a separation requirement granted by the Board be forwarded to the City Council for its review, and the City Council may remand the variance of the separation requirement back to the Zoning Board of Adjustment for further study if the Council believes the variance was improperly granted.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, as follows:

ALTERNATIVE RESOLUTIONS

- A The City Council remands the Decision and Order to the Zoning Board of Adjustment for further study. The effective date of the Board's decision will be deferred for 30 days from the date of this remand.
B The City Council takes no action to review the Decision and Order. The decision of the Board will become final on May 26, 2018.
C The City Council declines to remand the decision to the Zoning Board of Adjustment. The decision of the Board becomes final on this date.



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(Council Communication No. 18-219)

MOVED by Westergaard to adopt alternative A, above.

APPROVED AS TO FORM:

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO				✓
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	6			1

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

T. M. Franklin Council Mayor

Diane Rauh City Clerk